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STATUTES CITED

Constitution of the United States:
First Amendment 4
Fourteenth Amendment 4
Judicial Code, Section 237(a) (28 U.S.C. 344a), as amended by the Act of January 31, 1928, Chapter 14, 45 Stat. 54 and by the Act of April 26, 1928, Chapter 440, 45 Stat. 466 1
Virginia Code of 1936, Section 4480-A 1

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SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND

DAN LEROY HALL,

vs.

COMMONWEALTH OF VIRGINIA

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Legislation Drawn in Question

Section 4480-A of the Virginia Code of 1936 is here drawn in question. The statute reads as follows:

> Going upon lands or premises of another after having been forbidden to do so—if any person shall without authority of law go upon or remain upon the lands or premises of another, after having been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge or possession of such land, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $25.00.

Timeliness

The judgment of the Supreme Court of Appeals of Virginia, affirming the judgment of the Hustings Court of the City of Richmond, assessing a fine of Five Dollars ($5.00), was rendered and entered on the 8th day of September, 1948, whereupon the judgment of conviction became final. This appeal is duly presented and filed within three months from the date such judgment of the Supreme Court of Appeals of Virginia became final and is therefore timely.

Opinion

The opinion of the Supreme Court of Appeals of Virginia is not yet reported. It is set out in the record and is an appendix to this statement as to jurisdiction. See Appendix pages 26 to 42.

History of Proceedings Showing How Federal Questions Raised

Through a warrant issued by a justice of the peace the appellant, Dan Leroy Hall, was arrested and commanded to appear before the Police Court of the City of Richmond September 4, 1946, [50].[1] The warrant charges that he "did

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[1] Figures appearing in brackets refer to the printed record filed in this case.

unlawfully trespass upon the property of the Monroe Terrace apartments, 801 West Franklin Street" in the City of Richmond, Virginia, on or about August 27, 1946 [50]. The case came on for hearing in the Police Court of the City of Richmond on October 2, 1946 [50]. A conviction resulted [51]. Appellant was fined $5 and costs [51].

An appeal was duly taken by appellant to the Hustings Court, which was perfected upon filing of a bond in amount or $100 by the appellant [51-52]. The appellant having pleaded not guilty, *de novo* trial of the warrant came on for hearing before the court below on October 31, 1946 [52]. Evidence was offered by the prosecution and by the defense and received by the court [53-96]. At the close of the evidence the appellant duly made his motion to dismiss [93-95]. In such motion he stated explicitly and extensively the grounds for a dismissal of the prosecution, which are federal constitutional grounds, and which are also made the grounds of this appeal [93-95]. The judge of the Hustings Court took the case under advisement and reserved decision [52, 96]. After the submission of briefs and the argument of counsel the court deliberated upon the case [52, 96]. Thereupon, January 13, 1948, the court convicted the appellant, finding him guilty, and fined him the sum of $5 [52-53].

An appeal was duly taken from the Hustings Court of the City of Richmond to the Supreme Court of Appeals of Virginia [97]. The record was duly certified and filed in the Supreme Court of Appeals as required by law. [96-98] In due course of time the cause was briefed and argued orally before the Supreme Court of Appeals of Virginia. In the Supreme Court of Appeals the federal questions were urged, as they were to the trial court. The Supreme Court of Appeals said that "The accused . . . seeks to reverse a judgment . . . on the ground that the convic-

tion violates his right to freedom of speech, freedom of the press, freedom of assembly, and freedom of worship guaranteed to him by amendments I and XIV of the Constitution of the United States . . ."

Statement of Facts

The Monroe Terrace apartments building is situated at 801 West Franklin Street, Richmond, Virginia [63]. It is owned by the Monroe Prestwould Corporation, a real estate operating corporation [63, 66, 69, 70]. A twelve-story structure, the building contains approximately sixty apartments [68]. Between 200 and 300 persons reside in the apartments of the building.

Inside the front door on the ground floor, leading in from the public sidewalk, there is a large entrance lobby, at the back of which is located a desk. At this desk is a clerk. The apartments do not have a direct telephone switchboard connection with the lobby. There is merely an ordinary commercial telephone at the lobby desk. The only means of communicating with tenants by telephone is through the regular commercial telephone system [66-67]. There is no telephone switchboard at the lobby desk. Tenants occupying apartments are listed in the Richmond commercial telephone directory [63]. The method of communicating with them is by dialing the telephone company. The proof does not show that all persons occupying apartments are accessible through such telephone connection [67].

In the building are two elevators, which run from the ground floor to the top floor [67, 68]. They are situated on both sides of the desk. Girls are employed to operate the elevators. The floors of the building are also accessible by stairways leading from the ground floor to the top floor, and opening out on each floor. There is one stairway opposite each elevator [68].

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The apartment building and the employees working in the building are under supervision of an apartment manager [63, 66]. The landlord and owner of the apartment building has prescribed an unwritten regulation which it has had in effect since the beginning of its management, requiring each visitor in the building to stop at the desk and ask the clerk to announce the caller by telephone to the tenant proposed to be visited. The regulation prohibits any person to call upon any tenant unless the caller previously has been expressly invited and/or has been announced by telephone to the tenant from the desk in the lobby and the tenant has authorized the clerk at the desk to send the caller upon the elevator to the floor where the apartment of the person being visited is located [63, 64, 65, 66, 67, 68, 69, 72].

Unless the caller or the one desiring to go from door to door is able to give the names of the persons upon whom he desires to call in the apartment building, the desk clerk is not authorized to telephone anyone. The desk clerk is not authorized to give the names out to any caller who desires to go from door to door. Therefore if a caller desiring to distribute literature from door to door did not know the names of the persons residing in the apartment building he could not get a list of names and could not get the desk clerk to call the persons to ascertain whether or not they desire to receive the literature that he had to distribute from door to door.

There must be previous invitation by the tenant or the caller must be in a position to state the name of the person upon whom he desires to call before the clerk will telephone the individual whom the caller desires to see [66, 67].

There is no desk telephone or house telephone in the lobby. The telephone of the Monroe Terrace apartments is an ordinary dial telephone listed in the Richmond telephone direc-

tory. There is no direct telephone connection between the building entrance and all the tenants. To telephone the tenants who have telephones it is necessary to dial through the Richmond telephone system. Tenants in the building who do not have telephones may not be reached by any method of communication except door-to-door calls. The means of communication is not like that of the ordinary switchboard which is to be found in some apartment buildings and in hotels [60]. In this connection the appellant testified that the use of the telephone as a means of approaching the tenants and acquiring their consent to visit them was not a practice employed by Jehovah's witnesses and also was highly inconvenient and ineffective because personal contact was necessary in order to accomplish the mission; and furthermore, it would be less inconvenient to the householder to be called upon at the door rather than to call him on the telephone and attempt to explain the matter. Face-to-face and eye-to-eye contact between the distributor and the receiver of the literature was said to be absolutely necessary in order to effectively distribute the literature [78, 79, 84, 85, 86, 92-93].

The landlord-management does not have a written power of attorney from the tenants authorizing it to keep visitors away from the tenants' doors unless they have been previously invited or the call consented to over the telephone [66]. The regulation of the landlord is not expressly provided for in the written lease or in any other written document signed by the tenant or landlord [70, 72]. There is no express agreement between the landlord and the tenants with reference to the regulation. Two tenants were called as witnesses. They merely testified that they understood that there was the regulation promulgated by the landlord and that they were in favor of the regulation promulgated and enforced by the landlord. However, they did not testify

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that there was an agreement between the landlord and the tenants in respect to the particular regulation [72, 73, 74-75].

The appellant, Dan Leroy Hall, is a minister of the gospel, being a special representative of the Watchtower Bible and Tract Society associated with the Richmond congregation of Jehovah's witnesses [81]. He is the presiding minister of the congregation of missionary evangelists [81, 82]. He is a duly ordained minister, having been ordained in 1941 [83]. He possesses credentials of ordination and identification which were received in evidence [84]. He directs and supervises the activity of the group in Richmond [81, 82]. There are about 170 missionary evangelists in the Richmond congregation [82]. The missionary evangelistic work done by this group of ministers, which is carried on under the defendant's direction, is primitive. They call from door to door, visiting the people in their homes, leaving Bible literature and discussing Bible prophecies, as well as inviting the people to attend public meetings at which sermons are preached from the pulpit and public platform [82-83]. The Monroe Terrace apartments are within the territory assigned to the Richmond congregation of Jehovah's witnesses. The reason that this primitive method of preaching from door to door is employed is because it is the method established from preaching by Christ Jesus and His apostle Paul, as well as the fact that it is the only practical means of getting the message to the people, inasmuch as the great majority of the people do not belong to or attend any church or place of Bible instruction [83, 84]. The appellant and others of Jehovah's witnesses consider that they are bound by the command of Almighty God to faithfully carry this message to the people at their homes, and their failure to do so would result in their everlasting destruction [84].

Before August 20, 1946, the appellant, as presiding minister of the congregation of Jehovah's witnesses, had made arrangements to hold a series of public meetings in Monroe Park, adjacent to and immediately across the street from the Monroe Terrace apartments in the City of Richmond [84-85]. It was planned to go from door to door and house to house in the neighborhood surrounding Monroe Park and hand to the people visited printed invitations to the public meeting [84-85]. On August 20, 1946, Dennis C. Cahoon, one of Jehovah's witnesses associated with the congregation, was scheduled to give a talk upon the Bible, entitled "Religion as a Peacemaker," at 8 o'clock in the evening. A number of Jehovah's witnesses gathered at Monroe Park about 7 o'clock in the evening and from there went to various parts of the neighborhood to call from door to door and hand out the printed invitations to the people to attend the public lecture in Monroe Park, a public park in the City of Richmond [84-85]. The appellant and Cahoon, who were later followed by three others doing the same work, were assigned to work the Monroe Terrace apartments. Shortly after 7 in the evening they entered through the lobby to the elevators and requested the elevator operators to let them off on several of the floors of the building [75, 76, 85-86]. Cahoon and Hall got off the elevator on the 9th floor. Cahoon began to call from door to door on the 9th floor and Hall went up to the 10th floor, where he began to call from door to door. In calling upon the people from door to door they summon them to the door by pushing the door bell. If the householder answered, they handed to him the printed leaflet inviting him to attend the public meeting in the park across from the Monroe Terrace Apartments [75-76]. On the door of each apartment in the building is a bell [69-70]. In calling from door to door upon the tenants that evening the appellant did not have any

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trouble or difficulty with any of the tenants [85-86]. Every tenant he summoned to the door accepted the printed invitation and thanked him very much for calling [85-86]. No one told him to leave or not to come back [85-86]. He was in the building about 25 minutes. On finishing his work in the building he left [86].

Cahoon had finished working his floor of the apartment building and left a short time before Hall did [76-77]. When Hall came out of the apartment building he was greeted by Cahoon. Then one of the three persons who had followed Hall and Cahoon into the building reported that they were unable to work their floors of the apartment building because the desk clerk and elevator operators refused to allow them to go to the apartments [76, 77, 86]. Thereupon Cahoon and Hall went back into the apartment building and approached the desk clerk and had a conversation with her [76, 77, 86]. They explained that they were responsible for personally inviting the people to attend the lecture in response to her request that they leave the handbills with her and that she would see that some one delivered them to the tenants [76, 77, 89]. Upon her refusal to permit the elevator girls to take Hall and Cahoon up to the floors to finish the work in the building, the two men went up the stairway and delivered the invitations to the tenants, who thanked them for calling [77, 78, 86, 87].

No person was opposed or frightened because of the work that they did from door to door [87]. Cahoon failed to get one woman who came to the door to open the door. She refused to open the door. That was Mrs. Hunter, who testified for the Commonwealth [72, 77, 78]. Cahoon finished working the apartment building and left, without any difficulty and without any further conversations with the clerk or any other employee of the apartment building.

Hall was accosted by the manager of the apartment building, Mr. Parrish, as Hall was going down the stairway and

entered onto the 9th floor landing of the stairway. Mr. Parrish prevented him from continuing on down the stairway. Parrish told him he had no right to be in the building and angrily escorted Hall to the elevator, informing Hall that no one had the right to go into the building and make calls unless the caller had the name of the person to be called upon and had been first announced by the desk clerk. Hall attempted to remonstrate with Parrish, calling to the attention of Parrish the decisions of the courts and the provisions of the Constitution. He showed Parrish that it was up to each tenant for himself to say whether he refuses to see Hall and other callers and not for the apartment management to prevent them from going from door to door [87-88]. Hall pointed out that the elevators, hallways and stairways of an apartment building were open for callers to use in going to and from tenants in the building, as much so as are the open public thoroughfares and sidewalks that make the private homes and dwellings of the people accessible to callers [87-88].

On August 27 appellant Hall and Cahoon returned to the Monroe Terrace apartments to hand out printed invitations to the tenants in the apartment building, inviting them to attend the public lecture in the public park across the street at 8 o'clock on the evening of August 27. They went into the building for the same purpose and to carry on the distribution of the invitations in the same way they had done previously on August 20 [79-80, 88].

Cahoon and Hall walked up to the desk in the lobby and informed the clerk that they intended to go from door to door handing out the printed invitations. The woman at the desk told them about the rule that prohibited door-to-door calls in the absence of consent over the telephone or prior invitation by the tenant [79-80, 88]. They informed her that they were not asking for permission, but were merely informing and that she ought not to be alarmed

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because their activity was not a violation of the law but was guaranteed by the Constitution and that they would go from door to door in spite of the rules and regulations of the apartment building [79-80, 88].

Immediately the clerk called Mr. Parrish and Hall and Cahoon went to the upper floors to distribute the printed invitations [82-89]. Hall distributed the printed invitations on the 12th floor in a peaceful and lawful manner, inviting the people to attend the public lecture in the park across the street at 8 o'clock. The leaflets distributed on August 27 were received in evidence [88-89]. Hall worked from door to door on four floors where the people gladly received him and "were very nice" to him. None objected to his calling from door to door and all greeted him with a smile and thanked him for calling [89].

Following the completion of his work, as he was leaving the lobby, he was apprehended by the manager, Mr. Parrish, who told him that he was warned to stay out. Parrish said, "You have come back to call my bluff. Now stay until I tell you to leave" [89]. Parish called the police officers who came and took Hall and the others into custody [90]

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved on Appeal.

ONE

The decision of the Supreme Court of Appeals of Virginia is erroneous because it is in direct conflict with the decisions of this Court.

Lovell v. *Griffin*, 303 U. S. 444;
Schneider v. *New Jersey*, 308 U. S. 147;
Cantwell v. *Connecticut*, 310 U. S. 296;
Murdock v. *Pennsylvania*, 319 U. S. 105;

Martin v. *Struthers*, 319 U. S. 141;
Follett v. *McCormick*, 321 U. S. 573;
Tucker v. *Texas*, 326 U. S. 517.

Two

The decision of the Supreme Court of Appeals of Virginia is erroneous because it is a departure from applicable principles expressed in decisions of this Court.

Lovell v. *Griffin*, 303 U. S. 444;
Schneider v. *New Jersey*, 308 U. S. 147;
Cantwell v. *Connecticut*, 310 U. S. 296;
Murdock v. *Pennsylvania*, 319 U. S. 105;
Martin v. *Struthers*, 319 U. S. 141;
Follett v. *McCormick*, 321 U. S. 573;
Tucker v. *Texas*, 326 U. S. 517.

Three

The statute, as construed and applied to give criminal sanctions to the regulation of the landlord, under the circumstances of this case abridges the appellant's right of freedom of press, speech and worship of Almighty God, contrary to the First and Fourteenth Amendments to the Constitution of the United States.

A

The Constitution guarantees freedom to use the halls of apartment houses to deliver literature to tenants in such houses as strongly as it secures to appellant the right to use the sidewalks that lead up to a private dwelling in the exercise of freedom of press and freedom to worship Almighty God guaranteed to appellant.

Schneider v. *New Jersey*, 308 U. S. 147, 164;
Martin v. *Struthers*, 319 U. S. 141, 145-146;
Tucker v. *Texas*, 326 U. S. 517;
Massachusetts v. *Richardson*, 313 Mass. 632;
Woods v. *Carol Management Corp.*, 168 F. 2d 791.

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B

The regulation is unconstitutional on its face and as construed and applied because it prohibits door-to-door preaching and distribution of literature without the prior consent or invitation of the tenant called upon which must be proved to the desk clerk in the lobby of the apartment as a condition precedent to exercising such constitutional rights in said apartment house.

Jones v. *Opelika*, 316 U. S. 584, 595-596;
Jones v. *Opelika*, 319 U. S. 103;
Martin v. *Struthers*, 319 U. S. 141;
Tucker v. *Texas*, 326 U. S. 517;
Zimmerman v. *London*, 38 F. Supp. 592;
Donley v. *Colorado Springs*, 40 F. Supp. 15;
De Berry v. *City of La Grange*, 62 Ga. App. 74.

C

The regulation does not leave the determination of whether the tenants desire uninvited door-to-door calls by distributors of literature with the tenants themselves but the regulation imposes conditions upon which such activity can be carried on for the whole community instead of leaving it to each tenant to decide.

Martin v. *Struthers*, 319 U. S. 141;
Marsh v. *Alabama*, 326 U. S. 501;
Tucker v. *Texas*, 326 U. S. 517.

D

The burden of proof is upon the Commonwealth to establish, and it has failed to prove, that each of the tenants made the lobby attendant of the apartment house his doorkeeper.

Busey v. *District of Columbia*, 78 U. S. App. D. C. 189, 138 F. 2d 592, executing mandate at 319 U. S. 579;

United States v. *Carolene Products Co.*, 304 U. S. 144, 152, 153;

West Virginia State Board of Education v. *Barnette*, 319 U. S. 624, 638-640.

Discussion

This case presents to this Court questions that are similar if not identical to the questions presented on a petition for writ of certiorari which is now pending before this Court in cause Number 187, October Term 1948, styled *Watchtower Bible and Tract Society, Inc. et al.* v. *Metropolitan Life Insurance Company.* The court below said: "The precise issue now under consideration was decided adversely to the contention of the accused in *The Watchtower Bible and Tract Society* v. *Metropolitan Life Insurance Company*, 297 N. Y. 572, 79 N. E. 2nd 433." . . . "The only difference between the regulation adopted by the Metropolitan Life Insurance Company and the regulation involved in this case is that, in the former, the regulation was written and incorporated in the leases, while in the case now under consideration the regulation was oral but adopted with the knowledge and consent of the tenants." [See appendix, pages 36, 41]

Inasmuch as the decision by the New York Court of Appeals is relied upon by the court below as being in point with this case and authority for the judgment in the case below, the appellant here relies upon and refers to the argument made by petitioners in the petition for writ of certiorari filed in cause Number 187, October Term 1948, at pages 18-42, 44-46.

Most of the facts stated by the court below in its opinion are correct, however there are some statements made in the opinion from which erroneous implications may be drawn. The court infers that there is a means of communi-

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cation between the lobby and all the apartments by telephone. The court says: "If the visitor has no express invitation, the clerk calls the tenant by phone; . . ." It is not a switchboard, private or branch telephone system. Many of the tenants can not be reached by telephone [66]. The court also implies that the clerk announces the arrival of the visitor to the tenant by telephone. The court says: "the clerk announce[s] his arrival to the tenant." The only way the clerk can announce the arrival of visitors to tenants who do not have a telephone is by taking the elevator and going to the apartment and knocking on the door. (See appendix, page 30)

The court also says: "The regulation seems to be oral but, as the trial court found, 'through custom and long usage' it has been approved by the tenants." While only two tenants testified that they approved the regulation, there is no testimony that all or any of the other tenants approved the regulation [63, 64]. In fact the testimony shows that many of the tenants were glad to have door-to-door calls by Jehovah's witnesses.

Except for these discrepancies, the facts appearing in the opinion of the Supreme Court of Appeals of Virginia are substantially correct and may be considered by this Court in determining the issues involved. The facts are succinctly stated in the opinion. See appendix, pages 26-29.

The court below has stated the contention of the appellant too broadly. The court says: "The substance of the contention of the accused is that the entrance, the lobby, the hallways, the elevators, and the stairways within the Monroe Terrace Apartment Building are public ways; . . ." See appendix, page 30. This does not properly present appellant's contention. The contention of the appellant is that such means of ingress and egress to the doors of the tenants' homes in the apartment building are open to use by the appellant because he is an implied invitee of such tenants.

He does not contend that the means of ingress and egress are the same as a public street. He contends that such means of ingress and egress in an apartment building may be used to the same extent and in the same manner as the private sidewalks on property which lead to the doors of single dwellings are used. The basic question presented in this case is whether a landlord may constitutionally forbid distributors of literature from using the means of ingress and egress to the doors of the tenants' homes in the apartment building in the absence of express approval by each tenant.

It is not asserted that the appellant trespassed against any of the tenants. The prosecution and affirmance was based on the grounds that he "did unlawfully trespass upon the property of the Monroe Prestwould Corporation," the landlord in this case [49]. There is no contention that the appellant returned to a tenant's door or remained at a tenant's door "after having been forbidden to do so" by the tenant. Appellant was convicted because he returned and refused to leave after having been forbidden to do so by the custodian of the apartment building. He was convicted because he persisted in using the means of ingress and egress to the apartments in the building in carrying on his door-to-door distribution of literature. The court below deals with the statute and regulation as though they left "to each householder the full right to decide whether he will receive strangers" as visitors. (See appendix, page 32) The court below erroneously likens the regulation and statute to the dictum in *Martin* v. *Struthers*, 319 U. S. 141, at page 148. However the regulation in this case is not that type which was approved in *Martin* v. *Struthers, supra.* Under all the facts and circumstances of this case, the regulation and the statute have been construed and applied in such manner to submit "the distributer to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to

receive it." (319 U. S. 141, at page 144) The regulation and the statute prohibit door-to-door distribution of literature. The requirement of a prior invitation from the tenant before calling at the door of the tenant is unreasonable, arbitrary and capricious, making impossible door-to-door visits. In fact, as construed and applied, the regulation and statute make it impossible for a distributer of literature to procure the consent of a tenant to call at his door. The landlord requires that an announcement of a caller be made by telephone [64]. There is no means of telephoning all of the tenants. Telephoning is done by dialing through the Bell Telephone System. There is no switchboard whereby telephonic communication is had with each tenant [66]. A door-to-door distributer of literature may not get a list of the tenants. The landlord will not let a distributer of literature know the names of any of the tenants so that they may be called by telephone [67]. The lobby attendant is forbidden to call any tenant on the telephone unless the name of a tenant or all the tenants desired to be called upon is provided by the caller [67]. This in fact is an absolute prohibition of distribution of literature and door-to-door calls in the apartment house. In fact it is an impossibility for a distributer of literature or door-to-door caller to comply with the regulation. The way it has been construed, such persons could not learn the names of all the tenants to procure consent. The only practical way that consent can be procured is to violate the regulation by calling from door to door to ask if permission would be granted.

The regulation does not leave to each tenant the right to decide whether he will receive strangers. In fact it prevents the tenant from having any contact whatever with door-to-door distributers of literature. The regulation cuts off entirely the means of contact between the householder and the door-to-door caller by stopping the caller at the threshold of the apartment building.

There is no proof whatever that all the tenants or even a majority of the tenants consented to the regulation. Only two tenants testified that they approved of the regulation. The burden of proof was upon the prosecution to show that all the other tenants approved of and consented to the regulation. The prosecution wholly failed to offer any evidence. The failure of the prosecution to prove this vital point of consent and approval by all the other tenants raises a presumption that such tenants were willing to receive door-to-door callers. Where the exercise of constitutional liberties is involved as here, the burden falls upon the prosecution to prove every fact necessary to show that the regulation is valid. *Busey* v. *District of Columbia*, 78 U. S. App. D. C. 189, 138 F. 2d 592, executing mandate at 319 U. S. 579; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, 153; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 638-640; *Thomas* v. *Collins*, 323 U. S. 516. The testimony of the appellant and his witnesses was that many of the tenants gladly received the literature and thanked them for calling. It can not be presumed that all of the tenants consented or authorized the regulation and its enforcement in the manner that the landlord enforced it. There is absolutely no evidence whatever that a majority or all of the tenants made the attendant in the lobby their doorkeeper to stop all visitors and announce them before the caller would be be allowed to proceed to the tenant's door.

The court below says that appellant demanded the right to have the householder or member of the tenant's family meet him at the door. What appellant contends is not precisely that. He contends that he has a right to use the means of ingress and egress to reach the door of the tenant. In the absence of proof of an express agreement or explicit approval of the regulation and its enforcement, the appellant has a right as an implied invitee to get to the doors of the tenants. The landlord was arbitrary and without au-

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thority from the tenants cut appellant off from the only practical means of contacting them, so as to make it impossible for him to exercise his rights secured by the First and Fourteenth Amendments. It is said by the court below that the effect of the rule of the landlord is that each tenant determines whether there will be entry by door-to-door callers. However, the regulation, as construed, enforced and applied to distributers of literature, is a determination by the landlord. It is the same as a determination by a city or community. It makes impossible for each tenant to determine whether he will or will not have visits by a distributer of literature. This Court has knocked down, as community determinations rather than determinations by the householders, convictions for the violation of regulations similar to this. *Martin* v. *Struthers*, 319 U. S. 141; *Marsh* v. *Alabama*, 326 U. S. 501; *Tucker* v. *Texas*, 326 U. S. 517. The court below has pushed aside the applicable decisions (*Martin* v. *Struthers*, 319 U. S. 141; *Marsh* v. *Alabama*, 326 U. S. 501; *Tucker* v. *Texas*, 326 U. S. 517) and relied for its authority upon the dissenting opinion of Mr. Justice Jackson in *Douglas* v. *Jeannette*, 319 U. S. 166, and the decisions by the trial court and the Court of Appeals in *Watchtower Bible and Tract Society, Inc., et al.* v. *Metropolitan Life Insurance Company*, 69 N. Y. S. 2d 385, 188 Misc. 978, 297 N. Y. 572, which are now challenged before this Court in Number 187, October Term 1948.

Anomalously, the court below says that appellant still has the right to distribute literature from house to house along the public streets, in the first part of its opinion, but in the latter part of its opinion the court below adopts the holding in *People* v. *Bohnke*, 287 N. Y. 154, which holds that the distribution of literature at the doors of the people along public streets may be prohibited and regulated by the precise type of regulation which is challenged here.

In order to set to one side as inapplicable the decisions of this Court involving door-to-door distribution of literature, the court below makes the statement that the distribution of literature involved in those cases was on the streets, sidewalks and other public places. On the contrary, an examination of the opinions, as well as the records, in each of the cases distinguished by the court below (*Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *Struthers*, 319 U. S. 141; *Follett* v. *McCormick* 321 U. S. 573; *Tucker* v. *Texas*, 326 U. S. 517) reveals that they all involved the distribution of literature at the doors of the people which were reached by the use of private sidewalks over private property. Concerning the *Tucker* case, the court says the question involved the right to distribute literature on the streets and sidewalks of Hondo Navigation Village. The record in the *Tucker* case shows that the distribution of literature was at the private doorsteps at the homes of the people which had been reached by Tucker by walking over private sidewalks. It was held that his conv ction under a trespass statute similar to the one involved in this case because of his refusal to obey the commands of the manager to stop was unconstitutional. The only difference between this case and the *Tucker* case is that in the *Tucker* case the householder lived in a single dwelling while here the householders live in a multiple dwelling.

If private sidewalks may be used to reach the doors of single dwellings by door-to-door distributers, by force of the same reason, the entrance, the lobby, the elevators, the stairways and the hallways of an apartment house may also be used by door-to-door distributors of literature. If the Constitution was sufficient to protect the distributer of literature on the private sidewalks and private doorsteps in the *Lovell, Schneider, Cantwell, Murdock, Martin, Follett*

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and *Tucker* cases, *supra*, it should also reach and shield the distributer of literature using the means of ingress and egress in an apartment building to reach the householders in such premises.

The court below says that the so-called regulation merely regulates distribution of literature in private places. It is not a regulation. It does not regulate. It prohibits. In order to regulate it must pertain to time, place and manner of door-to-door distribution. Since door-to-door calls are absolutely prohibited it can not be reasonably said that the device regulates. On the contrary, it prohibits door-to-door calls altogether. Concerning this type of device which is contended to be a regulation the Supreme Court of Oklahoma said: "The ordinance now considered is not regulatory but preventative and prohibitive as against an act innocent in itself and without surrounding facts or circumstances that would constitute the act a public nuisance." (*City of McAlester* v. *Grand Union Tea Co.*, 186 Okla. 487, 98 P. 2d 924.) The question here presented is fully covered in the petition for writ of error which is filed with the Supreme Court of Appeals of Virginia in this case. The petition for writ of error appears in the printed record. Nine printed copies of the record will be filed with the Court along with the printed statement as to jurisdiction at the time this case is considered. The Court is respectfully requested to consider the argument on the constitutional questions here discussed but which are more fully and extensively argued in the petition for writ of error. See the argument [13-46].

If the contention of the court below is correct, then at last a way has been devised to circumvent the long line of decisions by this Court in cases involving the distribution of literature by Jehovah's Witnesses, beginning with *Lovell* v. *Griffin*, 303 U. S. 444, and ending with *Tucker* v. *Texas*, 326 U. S. 517. If landlords can do what municipali-

ties can not do by prohibiting door-to-door calls upon the tenants, then the time has come when the constitutional guarantees of freedom of speech, press and worship may be completely emasculated. The Constitution secures the liberty of householders who rent property so that they might have the benefit of door-to-door distribution the same as to persons who own their own homes. Moreover, the Constitution makes no distinction between tenants of single dwellings and tenants in multiple dwellings. The sidewalk and the doorstep, although on private property, has from time immemorial been used to approach the householder. The Constitution, notwithstanding the declaration of the New York Court of Appeals to the contrary in *People* v. *Bohnke*, 287 N. Y. 154, 38 N. E. 2d 478, and *Watchtower Bible and Tract Society, Inc., et al.* v. *Metropolitan Life Insurance Company*, 297 N. Y. 572, secures the right of door-to-door distributers of literature to make use of such private sidewalks and doorsteps subject only to the liability for trespass against the householder himself. By the same token, the Constitution guarantees to the door-to-door distributer of literature the right to make use of the entrances, stairways, elevators and hallways to reach tenants of multiple dwellings.

The distinction that the court below has made between sidewalks and the means of ingress and egress to tenants of apartment buildings is a distinction without a difference. The Constitution makes no discrimination between the right to reach people who reside in single dwellings and those who live in multiple dwellings.

The statute invoked in this case, which is of the character mentioned by Mr. Justice Black for the Court in *Martin* v. *Struthers*, 319 U. S. 141, has been misapplied in an unconstitutional manner. If this were a conviction for trespass against any one of the tenants in the building because of refusal to leave the tenant's door or returning to the ten-

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ant's door after having been asked to stay away, then, of course, there would be no constitutional grounds presented. But this is entirely a different situation. There has been no trespass committed against any tenant. The trespass statute has been invoked because the appellant violated the regulation of the landlord and refused to leave the apartment building after having been ordered by the custodian to depart. Under the circumstances that the landlord had rented the premises to approximately 60 tenants, he relinquished his right of absolute dominion and lost the power to order appellant to depart from the means of ingress and egress to the homes of the tenants. It is the conviction for failing to obey the wishes of the landlord rather than the wishes of the tenants that makes the statute unconstitutional as construed and applied.

The devastating and far-reaching effect of sustaining the decision below becomes apparent when consideration is given to the number of persons who live in rented premises. Forty-six per cent of all the householders in the United States are tenants. See *Housing Statistics Handbook*, United States Government Printing Office, 1948, page 60. The percentage of people who occupy homes as tenants is greater in the cities than in the rural sections of the country. New York City is a good example. Only 26.7% of the householders in New York City live in single dwellings; 73.3% are tenants, householders living in multiple dwellings. 13.7% of the people live in two-family multiple dwellings; 9.4% live in three-family and four-family dwellings; 53.8% live in multiple dwellings for four families; 10.9% of the people live in multiple dwellings built to accommodate five to nine families. 35.1% of all the people live in large apartment buildings, built to accommodate over ten families. .2% live in other types of dwellings. See *Housing Statistics Handbook*, page 47, *supra*. A survey of 140 municipalities and municipal districts of the United States re-

veals that among the 17,217,317 householders only 37.3% own the homes in which they live; 10,793,741 are tenants. See 16th Census of the United States, 1940, Housing, Vol. 1, page 37. Approval of a rule and the manufacturing of a new principle which gives the landlord the powers conferred upon him by the court below would be disastrous to the liberties of tenants and door-to-door distributers of literature in all the metropolitan areas of the United States. Approval of such rule would be recrudescent. Tenants would be returned to the feudalism of the dark ages. Liberty of the tenant and all who desired to call upon him would be subject to the whim and caprice of the landlord who may be a tyrant. "There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond the reach of the Constitution." *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, at page 638. A tyrant, even though he be a landlord nurtured by his tenants' rentals, is not above the reach of the Constitution when he invokes the law as has been done in this case.

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Conclusion

It is respectfully submitted that a substantial Federal question is presented upon this appeal. Jurisdiction should be noted and the cause set down for oral argument.

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APPENDIX

Present: Hudgins, C. J., Eggleston, Spratley, Buchanan, Staples, Miller, J. J.

Record No. 3407

DAN LEROY HALL,

v.

COMMONWEALTH OF VIRGINIA

Opinion by Chief Justice Edward W. Hudgins

Staunton, Virginia, September 8, 1948

From the Hustings Court of the City of Richmond

JN. L. INGRAM, *Judge:*

The accused, by this writ of error, seeks to reverse a judgment imposing a $5 fine upon him for trespass, on the ground that the conviction violates his right to freedom of speech, freedom of the press, freedom of assembly, and freedom of worship guaranteed to him by amendments I and XIV of the Constitution of the United States, sections 12 and 16 of the Constitution of Virginia, and section 34 of the Virginia Code, the Virginia Statute of Religious Freedom.

There is no substantial conflict in the testimony. The Monroe Prestwould Corporation owns a building located at 809 West Franklin Street, Richmond, Virginia, and known as Monroe Terrace Apartments. This is a twelve-story structure containing 60 apartment units occupied by between two and three hundred people. The main entrance is a front door leading from the sidewalk to a large lobby on the ground floor. This lobby, the two elevators, the two stairways extending from the ground to the twelfth story, and the hallways are under the supervision and control of an attendant usually found at a desk placed on the far side of the front entrance to the lobby. Each of the sixty apartment units is entered from a hall, and on or near the door opening into each apartment is a button

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which, on being pressed, rings a doorbell inside the apartment.

The accused testified that he was a regularly ordained minister of Jehovah's witnesses which is "an unincorporated body or force of missionary evangelists." This unincorporated body is under the control and direction of the Watchtower Bible and Tract Society, a corporation organized under the laws of New York and Pennsylvania. This corporation divides the United States into districts and assigns to each district an evangelistic worker. Richmond, Virginia, is in a district assigned to the accused who is directed to preach the beliefs of the corporation. He claimed to be doing this "under a God-given right to preach in public places, on the streets and sidewalks, from door to door, and whether in apartments or whether in the country or whether in the deepest jungles of Africa."

He had arranged to hold a public lecture at 8 P. M. on August 20, in Monroe Park, a public park across the street from Monroe Terrace. Between 7 and 8 P. M. on that day he and four other Jehovah's Witnesses entered Monroe Terrace for the purpose of calling upon the tenants in each apartment to deliver religious tracts and to invite the occupants to attend the lecture. Neither the accused nor his associates sought permission to visit the tenants. The accused was assigned to call upon the occupants of the tenth, eleventh, and twelfth floors and used the elevator for that purpose. After he had completed his door-to-door calls upon these floors, he went outside the building where he was informed by a Mr. Cahoon, one of his associates, that the work had not been completed. He and Mr. Cahoon reentered the building and went to the desk, and according to the testimony of the accused, "Mr. Cahoon told them we were engaged in missionary work and were putting on a lecture in the park; the lady said to give her the handbills and she would see they were put out. About that time it was past seven and the lecture was to be at eight and Mr. Cahoon explained the obligation was upon our shoulders and besides, it would be the same as some Western Union boy delivering the handbills, that the obligation rests upon us and we explained this obligation was on us and that it was important for us to call upon the people. She said she could not give permission. He said, 'I am not

asking for permission, and if you will not let the elevator girls take (us) *up* we will have have to walk.' "

These two Jehovah's Witnesses, over the protest of the attendant, walked up the stairs and were ringing the different doorbells when Mr. C. O. Parrish, the manager of the apartments, stopped them and informed them that one of the rules governing the occupants of the building which had been adopted by the owner with the knowledge and acquiescence of the tenants, forbade any and all visitors from using the hallways to call upon the tenants unless their names were given and their intended visit was announced to the tenant from the desk in the lobby. To the explanation of this rule the accused said: "I wasn't interested and cut him off and said I would go away and leave him alone, that it was up to the people to tell us whether or not they wished to see us and if they don't want to be seen we don't bother them." The accused was told to leave the building and not return unless he was prepared to comply with the rule. He and his associates left the building, thus closing this incident.

The accused arranged another public lecture to be held in Monroe Park on August 27, at 8 P. M. He and his associates reentered the apartment building. This time they stopped at the desk of the attendant who informed them that she could not let them go upstairs unless they complied with the rule regulating the calls of all visitors. To that the accused replied that he was not asking for permission but was going upstairs anyway and merely wanted to inform her that the strangers in the hallways were "just ministers doing their work" and for her to inform the occupants "not to be alarmed, that it was all right." The accused in answer to the following question, said: "Q. You went in there in defiance of what Mr. Parrish told you and the lady at the desk told you because you believed you knew the law and that you had a right to go in? A. Yes, I stand on the law of the land and the law of the Almighty."

While the five were using the upstairs hallways for the purpose of distributing their tracts and invitations to attend the public meeting, some of the tenants complained to the management. Shortly thereafter the accused was ar-

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rested, charged with unlawful trespass, and convicted as heretofore stated.

The statute under which the accused was prosecuted is Chapter 165, Acts of 1934 (sec. 4480-a, Michie's 1942 Code) which provides: "That if any person shall without authority of law go upon or remain upon the lands or premises of another, after having been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge or possession of such land, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars."

The language of the statute is clear and unambiguous. Its provisions may be invoked only when a person has unlawfully entered or has remained upon the premises after he has been forbidden so to do by one lawfully in charge or in possession. The statute does not restrain the accused in any of his activities in the exercise of his religious beliefs; he may go from house to house distributing his pamphlets on the streets, sidewalks, or any other public place without violating any provisions of the statute. The only purpose of this law is to protect the rights of the owners or those in lawful control of private property. It belongs to that class of statutes of which the Supreme Judicial Court of *Massachusetts* in *Commonwealth* v. *Richardson*, 313 Mass. 632 at 638, 146 A. L. R. 648, said: "The statute with which we are concerned in the present case cannot properly be construed to restrict the defendants from going from house to house in pursuit of their religious calling. It does not purport to do so. Its only purpose is to protect the rights of those in lawful control of property to forbid entrance by those whom they are unwilling to receive, and to exclude them if, having entered, those in control see fit to command them to leave. Properly applied the statute does not violate the Fourteenth Amendment to the Constitution of the United States."

Mr. Justice Black, in *Martin* v. *City of Struthers*, 319 U. S. 141 at 147, speaking of this particular statute and other statutes of similar character, said: "Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at

least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more."

We find nothing in the statute when properly applied which infringes upon any privilege or right guaranteed to the accused by the Federal Constitution.

The substance of the contention of the accused is that the entrance, the lobby, the hallways, the elevators, and the stairways within the Monroe Terrace Apartment Building are public ways: and the Fourteenth Amendment restrains the owner from adopting a rule or regulation prohibiting Jehovah's Witnesses from using the same for the purpose of distributing their religious tracts and beliefs just as it restrains the States and municipalities from adopting statutes and ordinances prohibiting similar use of highways, streets, sidewalks, and other public places.

This contention requires a careful analysis of the regulation attacked. The regulation has been in effect for more than fifteen years. No copy of the lease which the tenants are required to sign was produced in evidence. The regulation seems to be oral but, as the trial court found, "through custom and long usage" it has been approved by the tenants. It requires every visitor who enters the building to stop at the desk in the entrance lobby and have the clerk announce his arrival to the tenant. If the tenant informs the clerk that the visitor is expected, he is authorized to use the elevators and halls without question. If the visitor has no express invitation, the clerk calls the tenant by phone; and if the tenant wishes to see the visitor, he is directed how to find the apartment. If the tenant does not wish to see the visitor or is out, then the clerk so informs him and, for the time being, he is forbidden the use of the hallways or elevators. The effect of the rule is that the tenant determines whether or not the visitor is allowed to call.

It is unnecessary to analyze the more than 100 authorities cited by the accused in support of his argument. To do so would unduly lengthen this opinion and would serve no useful purpose. The new and broadened concept of the meaning of amendments I and XIV of the Constitution of the United States as conceived by five of the present nine members of the Supreme Court of the United States is

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expressed in several recent decisions. See the majority and minority opinions in *Murdock* v. *Pennsylvania, Martin* v. *Struthers, Douglas* v. *Jeannette,* 319 U. S. 105-182; 28 Minn. Law Review 209.

It was held by the majority members of the Court in *Murdock* v. *Pennsylvania* that the Fourteenth Amendment to the Constitution prohibits any State or muncipality from imposing a license tax as a condition to the free distribution or sale of religious tracts, pamphlets, or books upon the highways, streets, sidewalks, or other public places. The issue decided by the court is stated in this language: "We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities."

Mr. Justice Black, expressing the view of the majority in the case of *Martin* v. *City of Struthers, supra,* held that an ordinance which declared it to be unlawful for any person to go from door to door ringing doorbells and distributing to the occupants handbills, circulars, and other advertisements was an infringement upon freedom of speech, freedom of the press, and the exercise of religious liberty as guaranteed by the Fourteenth Amendment to the Constitution. In the course of the opinion, he said: "The dangers of distribution can so easily be controlled by traditional legal methods leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."

The object of the regulation adopted by the Prestwould Corporation with the acquiescence of the tenants is to secure the safety, comfort, convenience, and privacy of all tenants, and to secure and promote the investment which the owners have made in the building by forbidding the

use of the halls, elevators, and stairways to uninvited visitors and other unauthorized persons. The attendant in the lobby is made the servant—the doorkeeper—of each tenant, in that she is charged with the duty to announce every visitor and to determine if the particular tenant desires to receive him. If the visitor is unwelcome to the tenant, the attendant conveys that message to him. Each householder and not the owner exercises the right to determine whether he will receive the visitor, be he an acquaintance or a stranger.

Mr. Justice Jackson in an opinion concurring in the conclusion of the majority in *Douglas* v. *Jeannette*, 319 U. S. 166, gives a resume of the history of Jehovah's Witnesses, their beliefs, the type of pamphlets they distribute, and their connection with the Watchtower Bible and Tract Society. This opinion is a strong protest against the extent to which the majority of the court went in *Murdock* v. *Pennsylvania* and *Martin* v. *Struthers*, and their interpretation of the constitutional guarantee of freedom of speech, freedom of the press, freedom of assembly, and freedom of worship. The following excerpts are taken from this opinion, p. 174: "As individuals many of us would not find this activity (of Jehovah's Witnesses) seriously objectionable. The subject of the disputes involved may be a matter of indifference to our personal creeds. Moreover, we work in offices affording ample shelter from such importunities and live in homes where we do not personally answer such calls and bear the burden of turning away the unwelcome. But these observations do not hold true for all. The stubborn persistence of the officials of smaller communities in their efforts to regulate this conduct indicates a strongly held conviction that the Court's many decisions in their field are at odds with the realities of life in those communities where the householder himself drops whatever he may be doing to answer the summons to the door and is apt to have positive religious convictions of his own." In a foot note the following excerpt is quoted from Chafee, *Freedom* of Speech in the United States (1941) p. 407: "I cannot help wondering whether the Justices of the Supreme Court are quite aware of the effect of organized front-door intrusions upon people who are not sheltered from zealots and

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impostors by a staff of servants or the locked entrance of an apartment house."

At pages 178, 179, and 180 of the same opinion, Mr. Justice Jackson said: "Our difference of opinion cannot fairly be given the color of a disagreement as to whether the constitutional rights of Jehovah's Witnesses should be protected in so far as they are rights. These Witnesses, in common with all others, have extensive rights to proselyte and propagandize. These of course include the right to oppose and criticize the Roman Catholic Church or any other denomination. These rights are, and should be held to be, as extensive as any orderly society can tolerate in religious disputation. *The real question is where their rights end and the rights of others begin* (Emphasis added). The real task of determining the extent of their rights on balance with the rights of others is not met by pronouncement of general propositions with which there is no disagreement."

". . . A common-sense test as to whether the Court has struck a proper balance of these rights is to ask what the effect would be if the right given to these Witnesses should be exercised by all sects and demoninations. If each competing sect in the United States went after the householder by the same methods, I should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority resorting to the same tactics do to individuals and minorities? Can we give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? Religious freedom in the long run does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselyting pressures."

The most recent expressions of the Supreme Court of the United States on this subject are found in *Marsh* v. *Alabama,* 326 U. S. 501 and *Tucker* v. *Texas,* 326, U. S. 517, both of which were decided by a divided court. The facts in *Marsh* v. *Alabama* were that Chickasaw, a town in the suburbs of Mobile, Alabama, was owned by the Gulf Shipbuilding Corporation; the property consisted of residential

buildings, streets, sidewalks, sewers, and a block on which business places were situated. A deputy sheriff of Mobile county, paid by the company, served as the town policeman. The streets and sidewalks within the municipality had every appearance of the streets and sidewalks of any other town. The shopping districts "are accessible to and freely used by the public in general and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation."

The corporation had a printed notice posted near the post office which read as follows: "This Is Private Property, and Without Written Permission, No Street, or House Vendor, Agent or Solicitation of Any Kind Will Be Permitted." A Jehovah's Witness stood on the sidewalk near the post office and was distributing religious tracts. She was warned that she could not do this without a permit and that no permit would be issued to her. She refused to leave and was arrested under a statute similar to the Virginia statute which makes it a crime to enter or to remain on the premises of another after having been warned not to do so. The Alabama Court of Appeals in affirming the judgment of conviction held that there was no irrevocable dedication of the sidewalk to the public and that, title being in a private corporation, no constitutional right was involved. Mr. Justice Black in holding that the corporation had no right to prohibit a Jehovah's Witness from distributing religious literature on the street, in the course of the opinion said: "Can those people who live in or come to Chickasaw be denied fredom of press and religion simply because a single company has legal title to all the town? For it is the State's contention that the mere fact that all the property interests in the town are held by a single company is enough to give that company power, enforceable by a state statute, to abridge these freedoms.

"We do not agree that the corporation's property interests settle the question. The State urges in effect that the corporation's right to control the inhabitants of Chickasaw is coextensive with the right of a homeowner to regulate the conduct of his guests. We cannot accept that contention. Ownership does not always mean absolute dominion. The

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more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

The same reasoning was applied in *Tucker* v. *Texas*. The question involved was the right of Jehovah's Witnesses to distribute religious literature on the streets and sidewalks of Hondo Navigation Village which is owned by the United States under a Congressional program designed to provide houses for persons engaged in national defense activities. The Federal Public Housing Authority had placed the buildings and the village in charge of a manager. The village had all the appearance of a typical American town. The manager forbade a Jehovah's Witness to distribute her literature. She persisted and was convicted of trespass under the Texas statute. It was held that the Federal Public Housing Authority had no such power and that her conviction violated freedom of speech, freedom of the press, freedom of worship, and freedom of assembly.

While these Constitutional guarantees have been greatly extended by the Court's construction of amendments I and XIV, they have not been expanded to the extent that the householder or some member of his family must meet Jehovah's Witnesses at the door and accept or reject the religious literature offered. That, in substance, is just what Jehovah's Witnesses are demanding in this case.

The following syllabi in *People* v. *Bohnke*, 287 N. Y. 154, 38 N. E. (2d) 478, concisely describe the ordinance involved and the precise point decided: "1. A village ordinance providing that, without the consent of the occupant, no person shall enter upon private residential property in such village for the purpose, among other things, 'of distributing any handbill, pamphlet, tract, notice or advertising matter,' but that it shall not apply to persons who have resided or maintained a place of business in such village for six consecutive months, is valid.

"2. On trial of defendants, on a charge of violating the ordinance by distributing religious pamphlets from door to door in the village, a defense that the ordinance is repugnant to the Fourteenth Amendment to the Federal Con-

stitution in that it deprives the defendants of their rights to freedom of religion, freedom of speech and the equal protection of the laws, was properly overruled. The ordinance merely regulates the right of entry onto private property and infringes no right of defendants since the Constitution does not guarantee them any right to go onto private property for the purpose of distributing pamphlets."[1]

The precise issue now under consideration was decided adversely to the contention of the accused in *The Watchtower Bible and Tract Society* v. *Metropolitan Life Insurance Company*, 297 N. Y. 572, 79 N. E. 2nd 433. There the facts were that the Metropolitan Life Insurance Company, as a private proprietor, owned in the Borough of the Bronx, New York City, a residential community called Parkchester which is said to be the largest of its kind in the world. It covers 129 acres, houses 12,000 family units, including a population of 35,000, in 171 adjoining and "interrelated" apartment houses. The buildings "are seven to twelve stories high. Through Parkchester run two public highways and in it are a number of private streets, lanes, and parks, as well as shops, offices, and automobile service stations, the latter operated by tenants of defendant. All of the apartments are held under written leases from defendant. Each such apartment lease binds the tenant to comply with such rules and regulations as the landlord shall from time to time deem necessary for the safety and care of the buildings, 'and the preservation of good order therein, as well as the comfort, quiet and convenience of other occupants of the building.'" The written regulation in the lease is as follows: "No person or group of persons shall enter any apartment building in the Parkchester development for the purpose of canvassing or of vending, peddling, or soliciting orders for any merchandise, device, book, periodical, pamphlet, circular, or for any printed, mimeographed, multigraphed or typewritten matter what-

[1] The Supreme Court of the United States denied a petition for a writ of *certiorari* on April 13, 1942. Mr. Justice Black in a footnote to the majority opinion in *Martin* v. *City of Struthers* (319 U. S. 148) referred to this decision with apparent approval.

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soever; nor for the purpose of distributing any handbill, pamphlet, circular, tract, book, booklet, notice, or advertising matter; nor for the purpose of playing any phonograph or musical instruments in said apartment houses in connection with such canvassing, vending, peddling, solicitation or distribution; provided, however, that such canvassing, vending, peddling, soliciting or distribution may be made with the consent of the Manager of the development or may be made within the apartment of any tenant if the prior written consent or invitation of such tenant shall have previously been furnished or exhibited to the Manager of the development."

Jehovah's Witnesses under the direction of the Watchtower Bible and Tract Society Incorporated, attempted to make the same use of the halls, elevators, and stairways of the apartment buildings, and for the same purpose, as they did of the passageways in the Monroe Terrace Apartments. A force of private guards, which the Metropolitan Life Insurance Company maintained, intercepted them when they entered the apartment houses and prevented them, by ejectment when necessary, from engaging in their preaching activities from door to door in the apartment buildings. The attorneys for the parties were unable to reach a satisfactory conclusion of the matter. In March, 1946, the Metropolitan Life Insurance Company took a written poll of its tenants to ascertain which of them desired to receive visitors from Jehovah's Witnesses. The answers of a very large majority of the tenants indicated that only about thirty of them desired to receive such visitors. These facts were communicated to counsel for the society together with the names of the tenants who desired the visitors; and the society was instructed that they might visit those tenants but no others.

The Watchtower Bible and Tract Society filed a bill for an injunction praying that the Metropolitan Life Insurance Company be enjoined from prohibiting them from making a door-to-door canvass within the apartment buildings. In the trial the full history of the society, its connection with Jehovah's Witnesses, and the type of literature and tracts

which revealed the beliefs and activities of the plaintiffs were developed.

Mr. Justice Pecora, the trial judge, in his opinion (69 N.Y. Supp. (2d) 385) recited the facts in some detail and described the type of literature and the organization and activities of the society.[2] All the Federal cases cited in the briefs filed in this case were cited in the briefs in the New York case. The trial court emphasized the fact that all of the Federal cases relied upon involved State statutes, municipal ordinances, or regulations (except *Marsh* v. *Alabama* and *Tucker* v. *Texas, supra.*), and declared that the regulation of the Parkchester Apartment Houses was one adopted by the Metropolitan Life Insurance Company in its capacity as landlord; that the regulation was de-

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[2] "Plaintiffs' literature also declares that all organized governments and their agencies are part of Satan's invisible government on earth. Yet they come before this court—which, according to their beliefs, is an instrument of Satan's government—and invoke its powers for their protection. The court, of course, recognizes that plaintiffs are entirely justified in seeking its protection in the exercise of rights which they claim to have under the constitution of our government, even though they regard that government as dominated by Satan.

"Instead of being chartered under our Religious Corporations Law, the plaintiff society is incorporated under our Membership Corporations Law. It claims to be a non-profit organization, and that its adherents are engaged in the 'charitable work' of preaching the gospel of the Kingdom of Almighty God. But it admits that it does not bestow or distribute any other form of public charity or philanthropy. The evidence shows that it owns and operates a large printing plant in Brooklyn, wherein its literature is printed. The society is fully reimbursed by its ministers or workers for the literature which they distribute to the public, and its gross income therefrom exceeds one million dollars annually, at least in recent years. Its ministers or workers for the most part distribute such literature to the public for sums or 'contributions' which net a substantial profit to them over and above the prices which they pay to the society for it.

"Nothwithstanding such anomalies as may be evidenced in the avowals and activities of the plaintiffs, this court is inclined to credit them with sincerity in their protestations and professions of faith. It will pass no opinion, however, upon their soundness, for it is unnecessary to do so in order to decide the issues here raised. In the exercise of the rights of freedom of speech, of press and of worship, one may disseminate his views, no matter how unorthodox or abhorrent even they may seem to others."

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signed "to increase the safety, care, and cleanliness of the houses, to preserve good order therein, and to promote the comfort, quiet, and convenience of their occupants." The right to prescribe the ordinance was given to the owner by the provisions of its written leases. Speaking to the point, the trial court declared: "It has long been established that the First Amendment to the Federal Constitution prohibits Congress from passing any law abridging the rights of free speech, of the press, and of worship; or the rights of the people to peaceably assemble and to petition the government for a redress of grievances; and that the Fourteenth Amendment prohibits a state from depriving any person of life, liberty or property without due process of law, and from making or enforcing any law abridging the privileges or immunities of citizens of the United States. But neither amendment adds anything to the rights of one citizen as against another, nor do they inhibit action by individuals in respect of their property.

". . . Not one of those cases has held that Jehovah's witnesses, or others having similar pursuits, have a constitutional right to enter *within* an apartment house or multiple dwelling house, against the wishes of its owner or occupants. Those cases, it is true, have upheld their right to go upon the streets and to go from house to house and knock upon the doors *abutting* on the streets, in order to enable them to distribute their literature and to deliver their evangelical messages. It was even held that they had the right so to do in cases where the streets as well as the abutting houses were all privately owned by a corporation (*Marsh* v. *Alabama, supra*); and where they were owned by an agency of the United States Government (*Grace* (*Tucker*) v. *Texas, supra*). But that august court has yet to rule that they have any constitutional right to go *beyond* the streets (whether publicly or privately owned) and *into* the abutting houses against the wishes of the owners or occupants. I do not think its adjudications thus far have destroyed the time-honored maxim that a man's home is his castle, nor any of its cherished implications.

"The inner hallways of apartment houses are not to be regarded in the same light as public roads, streets or high-

ways, even when the naked fee of the latter is privately owned. As was said in *Hague* v. *C.I.O.* (307 U. S. 496, 515): "Wherever the title to streets and parks may rest, they have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.

"Does the foregoing mean that the inner hallways of apartment houses, merely because they must be traversed from the street in order to reach the actual apartments wherein the tenants reside, likewise are burdened with the rights which the public has in streets? Do such inner hallways constitute places of public assembly or for communicating thoughts one to another, or for the discussion of public questions? In the opinion of this court, the answer to those questions is clearly 'No.'"

On review by the New York Court of Appeals the judgment of the trial court, denying the Watchtower Bible and Tract Society Inc. injunctive relief and holding the regulation valid, was approved. On the appeal the plaintiff contended that the decision was controlled by the opinions in *Marsh* v. *Alabama* and *Tucker* v. *Texas* and that the effect of these decisions overruled the New York case of *People* v. *Bohnke*, 287 N. Y. 154, 38 N. E. (2d) 478. In rejecting that contention the court pointed out the distinction in the facts involved and quoted with approval its former holding in the *Bohnke* case as follows: "It (the ordinance) does not prohibit pamphleteering. It regulates pamphlet distribution in private, not public, places, and gives no public officer any power of censoring the pamphlets or licensing, or refusing to license, their distribution. (See *Cox* v. *New Hampshire*, 312 U. S. 569, 574; *People* v. *Kuc*, 272 N. Y. 72, 74; *Town of Green River* v. *Fuller Brush Co.*, 65 Fed. Rep. (2d) 112). It does not infringe any of appellants' rights to the free exercise of their religion since it merely regulates their entry onto private property for the purpose of promoting their religious beliefs. It does leave to the pleasure of the individual householder the determination of whether or

not pamphlets may be circulated on that householder's premises, but this infringes no right of appellants, since the Constitution does not guarantee them any right to go freely onto private property for such purposes." 79 N. E. (2d) at 435.

In concluding its discussion the New York Court said: "Our purpose in thus briefly analyzing those decisions (*Marsh* v. *Alabama* and *Tucker* v. *Texas*) is to show that they do not (nor do any others of which we know) go nearly so far as appellants would have us go here. Parkchester like Chickasaw, Alabama, and the Federal Housing community in Texas, is privately owned, but there the similarity as to facts ends. It is undisputed that this defendant has never sought in any way to limit the Witnesses' activities on the streets or sidewalks of Parkchester, some of which are privately, and some publicly, owned. The distribution which this defendant's regulation inhibits was not on streets, sidewalks or other public or quasi-public places, but inside of, and into, the several floors and inner hallways of multiple dwellings. Moreover, defendant's regulation did not absolutely debar these ministers from their visits in the buildings and their persuasions therein, since it allowed them, whenever a tenant so desired, and expressed his desire. We think the *Bohnke case* is still the law and leaves valid the regulation of door-to-door calls along public streets. But, regardless of the *Bohnke* ruling, no case we know of extends the reach of the Bill of Rights so far as to proscribe the reasonable regulation, by an owner, of conduct inside his multiple dwelling. So holding, we need not examine the larger question of whether the pertinent clauses of the Constitutions have anything to do with rules made by any dwelling proprietors, governing conduct inside their edifices." 79 N. E. (2d) 436.

The only difference between the regulation adopted by the Metropolitan Life Insurance Company and the regulation involved in this case is that, in the former, the regulation was written and incorporated in the leases, while in the case now under consideration the regulation was oral but adopted with the knowledge and consent of the tenants. The rule adopted by the Monroe Prestwould Corporation with the knowledge and consent of the tenants, regulating the

conduct of visitors inside the building, is valid and reasonable and does not infringe upon any right or privilege guaranteed the accused by the Constitution of the United States, the Constitution of Virginia, or the Virginia Statute of Religious Liberty. This being true, when the accused and his associates refused to leave the premises on the request of the manager, they violated the provisions of Chapter 165, Acts of 1934.

The judgment of the trial court is affirmed.
Affirmed.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 400

DAN LEROY HALL,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

MOTION TO DISMISS OR AFFIRM

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 400

DAN LEROY HALL

vs.

COMMONWEALTH OF VIRGINIA

APPELLEE'S MOTION TO DISMISS OR AFFIRM

The appellee, believing that the matters set forth in the Memorandum in support of this motion will demonstrate the lack of substance in the question raised by this appeal, files this, his motion to dismiss the appeal or, in the alternative, to affirm the judgment of the Supreme Court of Appeals of Virginia on the ground that the question raised on behalf of the appellant has been so plainly foreclosed by decisions of this Court as to make further argument unnecessary.

While the cause is one which would otherwise be reviewable by the Supreme Court of the United States on direct appeal from the Supreme Court of Appeals of Virginia, appellee asserts that, for the reasons stated in the Memorandum filed in support of this motion, the Court is warranted in summarily disposing of the appeal at this stage of the proceeding.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 400

DAN LEROY HALL

vs.

COMMONWEALTH OF VIRGINIA

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

This appeal raises the question of the constitutionality of §4480-A of the 1942 Code of Virginia. That statute reads as follows:

> "If any person shall without authority of law go upon or remain upon the lands or premises of another, after having been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge or possession of such land, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars."

It is urged by the appellant that this statute, as construed and applied in connection with a regulation in effect as to visitors at the Monroe Terrace, an apartment house in Richmond, Virginia, abridges the appellant's freedom of speech, press and worship.

The Monroe Terrace is a single apartment building of twelve stories, containing approximately 60 apartments. It is owned by the Monroe Prestwould Corporation, a private corporation. The regulation involved in the case has been in effect for over fifteen years, and while it is oral, the trial court found it had been approved by the tenants through custom and long usage.

This regulation requires every visitor who enters the building to stop at the desk in the entrance lobby and have the clerk announce his arrival to the tenant over the telephone. If the tenant informs the clerk that the visitor is expected, he is authorized to use the elevators and halls without question. If the visitor has no express invitation, the clerk calls the tenant, and if the tenant wishes to see the visitor, he is directed how to find the apartment. If the tenant does not wish to see the visitor, or is out, the clerk so informs the visitor and, for the time being, he is forbidden the use of the hallways or elevators.

On August 20, 1946, the appellant, a member of Jehovah's Witnesses, distributed his literature and made his calls upon tenants in the Monroe Terrace, apparently without knowledge of the regulation. The apartment manager advised him of the regulation and explained that he could call upon the tenants only by complying with it. On August 27, 1946, the appellant again called upon the various tenants without complying with the regulation, and after the warning. For this he was arrested and convicted.

Grounds and Decisions Supporting Motion to Dismiss

One

The decision of the Supreme Court of Appeals of Virginia is correct because it is based upon applicable principles and statements approved by this Court.

Martin v. *Struthers,* 319 U. S. 141, 63 S. Ct. 862;

Marsh v. *Alabama*, 326 U. S. 501, 66 S. Ct. 276;
Tucker v. *Texas*, 326 U. S. 517, 66 S. Ct. 274.

Two

The statute as construed and applied to convict the appellant for trespass committed after warning does not deprive the appellant of any constitutional rights.

A

The Supreme Court of Appeals of Virginia and the trial court have determined that the regulation is in effect with the approval of the apartment owner and the tenants. This regulation having the approval of the tenants, the appellant had no right to go beyond the lobby desk and enter the inner halls of the apartment without having secured the consent of one of the tenants. His assertion that he does have a constitutional right to do so under the facts found in this case does not present a substantial Federal question worthy of further argument.

B

Even if the regulation had not been approved by the tenants, it is a proper one to be promulgated by a private owner to apply upon his private property. The regulation is reasonable and does not prohibit the appellant from contacting and visiting any tenant in the apartment. It leaves up to each householder or tenant the right to determine whether he will receive the visitor.

Discussion

That this regulation is a valid and proper one, depriving no one of any constitutional rights, would seem to be clear under decisions of this Court. The regulation has been found to have the approval of the tenants by the Supreme

Court of Appeals of Virginia and the trial court. That this finding of fact does not in itself raise a federal question and is to be accorded great respect would seem to be well established. *Akins* v. *State of Texas*, 325 U. S. 398, 65 S. Ct. 1276. Particularly would this seem to be so where there is, as here, no evidence contrary to the finding of the state court, and where the question of fact does not involve the determination of whether a conviction was secured through methods which violate the Fourteenth Amendment. It is not for this Court to make an independent evaluation of the testimony before the state court. The determination by the state court should not be rejected unless such determination is so without warrant as to be palpable evasion of the constitutional guaranty invoked. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552. Here, the appellant made no effort in the trial court to rebut the Commonwealth's evidence as to the acceptance of the regulation by the tenants. The testimony of the tenants was as available to the appellant as it was to the Commonwealth.

The appellant appears to admit that an express agreement to this regulation and its enforcement by the tenants would properly prohibit him from using the inner hallways to make his calls without complying with the regulation. The regulation here involved is oral, but it still represents an express agreement between landlord and tenant, having been approved by the tenants through custom and usage.

The statute and regulation take this case beyond the ban of *Martin* v. *Struthers*, *Marsh* v. *Alabama* and *Tucker* v. *Texas*, *supra*. No community is substituting its judgment for that of the individual tenant as to the distribution of literature. The channels of communication between the appellant and the tenants are not blocked, except in so far as the tenant wishes to remove himself from the calls and solicita-

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tions of strangers by becoming the lessee in an apartment with such a regulation. The Monroe Prestwould Corporation has not attempted to decide for its tenants whether they should permit persons not specifically invited to go from door-to-door communicating ideas and invitations to the occupants. The tenants have decided for themselves that they wish to be spared such calls and visitations, and that such decision by the tenant, as reflected in the regulation, violates no constitutional rights of the appellant cannot be, and does not seem to be, seriously questioned by the appellant.

The appellant's contention appears to be that the tenants have not approved this regulation, and that the landlord has, by it, cut the tenants off entirely from contact with the door-to-door caller. Not only is this contention contrary to the finding of fact, but it is also a misstatement of the effect of the regulation.

Even without the approval of the tenants, the regulation under attack here would be a proper one for the owner of private property to impose upon the use of his own property. The property here involved is one apartment house, used solely for residential purposes and in no way open to use by the public in general, as was the case of the towns in *Marsh* v. *Alabama* and *Tucker* v. *Texas, supra.* Also, unlike the regulations involved in those two cases, this regulation does not prevent and prohibit solicitation, it merely provides a reasonable means of regulating it. The appellant was informed, as the record will show, that he could go in the inner hallways to call upon any tenant, if he first secured the permission of that tenant. (R. 63, 64, 68.)

The argument advanced that this regulation prevents the tenant from having any contact whatever with door-to-door distribution is incorrect in fact and unsound as a constitutional objection, even if true. As a matter of fact,

the names of the tenants are available in the city directory, and their telephone numbers are in the public telephone book, if the tenant wishes his telephone number to be available to strangers. These tenants can be contacted in the normal manner, and the fact that this regulation requires that they be first contacted deprives no one of his constitutional rights.

Even if there is no means of telephoning or contacting all of the tenants, as argued by the appellant, this is certainly no constitutional objection to the regulation. Each tenant has the right to decide for himself whether he will or will not have a telephone and let his number be placed in the public book.

It is conceivable that a tenant would not have his number listed in order to avoid just such calls as are involved in this case. Each tenant surely has the right to hold out to the general public such means as he may wish to be used by the general public in communicating with him. If a person wishes to be easily accessible to the public, he can have his name listed in the public directory and telephone book. If he wishes a certain amount of insulation from the calls of strangers, he need not have a telephone or he may have the number kept from the public book. If he desires additional removal from the calls of strangers, he may become a tenant in an apartment wherein there exists a regulation such as the one in force in the Monroe Terrace Apartments. Even if it be argued that the tenants have not expressly approved the regulation, it cannot be said that they do not have knowledge of its existence.

Such a regulation as this, even without the express approval of the tenant, is clearly approved by the *Martin*, *Marsh* and *Tucker* cases, *supra*. No liberties of the tenants are restricted by this regulation. The landlord does not substitute his judgment for that of the tenant. The tenant

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is free to receive whomsoever he may wish. This regulation leaves the decision as to whether distributers of literature may lawfully call upon a person with that person himself. That this is where the decision belongs is expressly stated in *Martin* v. *Struthers, supra.*

This regulation properly leaving that decision where it belongs, and not being an unreasonable burden upon anyone, once the appellant has been warned of it by the landlord and ordered to keep away unless he complies with the regulation, he may properly be punished under the anti-trespass statute.

Conclusion

It is respectfully submitted that no substantial federal question is presented upon this appeal, and, therefore, jurisdiction should not be noted.

J. Lindsay Almond, Jr.,
Attorney General
Commonwealth of Virginia
Attorney for Appellee.

No. 400. HALL *v.* VIRGINIA. Appeal from the Supreme Court of Appeals of Virginia. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed. MR. JUSTICE DOUGLAS and MR. JUSTICE MURPHY are of opinion that probable jurisdiction should be noted. *Hayden C. Covington* and *Thos. H. Stone* for appellant. *J. Lindsay Almond, Jr.* for appellee. Reported below: 188 Va. 72, 49 S. E. 2d 369.